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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,756	12/31/2001	Donald Bruce Budinoff	STEU-3369	3721
5409 7590 12/09/2003 ARLEN L. OLSEN SCHMEISER, OLSEN & WATTS 3 LEAR JET LANE SUITE 201 LATHAM, NY 12110			EXAMINER PRATT, HELEN F	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/035,756

**Applicant(s)**

BUDINOFF, DONALD BRUCE

**Examiner**

Helen F. Pratt

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 4 is objected to because of the following informalities: in line 3, there should be a comma after "flavoring agent". Appropriate correction is required.

### ***Specification***

The use of the trademark INSTANT RICE IM 75 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

This trademark is also found in claim 8. Trademarks are not proper in claims. The particular ingredients should be inserted in the claims, depending on the basis for such language in the claims.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 is indefinite in the use of the phrase "acceptable quality attributes". It is not known what attributes are intended to make to make an acceptable quality product.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lo et al. (6,596,335) in view of Kohlwey (4,585,664).

Lo et al. disclose a process of making a rice pudding by forming a mixture containing rice, hydrating the rice and aseptically processing the mixture (col. 2, lines 28-49 and col. 5, lines 10-15). The rice is seen to have been aseptically processed because it is heated to a high temperature before being filled into containers and sealed and packaged (col. 5, lines 25-55). Claim 1 differs from the reference in the step of using pre-broken rice. However, Kohlwey discloses that it is known to use broken rice in a porridge mix for economic reasons (abstract and col. 2, lines 55-66, col. 7, lines 36-55). Therefore, it would have been obvious to one of ordinary skill in the art to use broken rice of Kohlwey for the rice of Lo et al. for the function of providing an economically suitable mixture of rice instead of only the parboiled rice of Yang et al.

Claim 2 further requires the use of rice starch and claims 3 and 4 other pudding ingredients and claim 5, carrageenan. The reference discloses the use of starch as in claim 2 and egg yolk and stabilizing agents such as carrageenan and tetrasodium pyrophosphate and sodium acid pyrophosphate and a sweetener and flavors (col. 2,

lines 50-60 and col. 4, lines 40-41, col. 6, lines 31-65). Therefore, it would have been obvious to use known rice pudding ingredients to make the claimed rice pudding.

Claim 6 further requires homogenizing the blend at 1500 psi's. The reference to Lo et al. disclose homogenizing at 2000 psig's (and 500 in a second stage) (col. 6, lines 50-65). However, as the effects of homogenizing are well known, it would have been within the skill of the ordinary worker to homogenize at a rate, which will favorably mix the composition. Therefore, it would have been obvious to homogenize at a particular rate.

Claim 7 further requires cooling at from 45 to 35F. Lo et al. disclose cooling to below 45F (col. 7, lines 58-63). Therefore, it would have been obvious to cool at the claimed rate.

Claim 8 further requires the use of Instant rice (trademark). Lo et al. disclose the use of starch. No patentable distinction is seen in the use of Instant rice which is seen to be a product containing starch and the use of other starches at this time, absent a showing of unexpected results. Therefore, it would have been obvious to various starch products for their known thickening properties in the process of the combined references.

Claim 9 further requires the use of a hydration tube and holding tube and passing the mixture through the two. Lo et al. disclose that rice can be hydrated by soaking. Certainly some type of apparatus is used to hold the rice during hydration (col. 5, lines 10-15). No weight is given to the particular type of apparatus in a process claim. However, the reference to Lo et al. do state that the rice slurry mix can be held prior to

heating in a hold tube from 0 to 10 minutes to effect hydration. A holding tube is disclosed in col. 5, lines 32-38. Therefore, it would have been obvious to use various vessels to process the rice as claimed.

Claim 10 further requires the use of ultra-high-temperatures and claim 11 that the mixture has a residence time in the hydration tube of at least 60 to 360 seconds. Lo et al. disclose using a UHT of 270 F to 300 F. for 0.6 seconds to 15 seconds and a hydration time of from 0 to 10 minutes (col. 5, lines 35-39). Therefore, it would have been obvious to process as claimed.

Claim 12 further requires that the mixture has a residence time in the holding tube of at least 15-30 seconds. Lo et al. disclose a residence time of from 0.6 to 15 seconds. Therefore, it would have been obvious to keep the mixture in the tube for the claimed amount of time.

A since stage homogenizer can be used as in Lo et al. (col. 4, lines 63-68). The particular psi has been discussed above. Therefore, it would have been obvious to homogenize as claimed.

The further limitations of claims 14-16 have been discussed above and are obvious for those reasons.

Claim 17 further requires that the mixture has acceptable quality attributes. The reference to Lo et al. disclose such as in intact rice particles and a desirable rice texture (col. 7, lines 59-73). Therefore, it would have been obvious to make rice pudding with desirable attributes.

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Claims 18 -20 are to the product whose limitations have been disclosed above and are obvious for those reasons. The further ingredients have been disclosed in claim 20. Amounts within the claimed range are disclosed which are seen as being within the skill of the ordinary worker to determine given the particular product to be developed and taste and consistency of the product (col. 6, lines 15-50 of Lo et al). Even though whole milk is not disclosed, non-fat dry milk is disclosed with the use of heavy cream, which would amount to whole milk. Therefore, it would have been obvious to make the product as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 12-1-03

*H. Pratt*  
**HELEN PRATT**  
**PRIMARY EXAMINER**